



**US Army Corps
of Engineers**
St Paul District

APPLICANT: PolyMet Mining, Inc

Public Notice

ISSUED: 15 June 2022

EXPIRES: 30 June 2022

REFER TO: MVP-1999-05528-TJH

**SECTION: 404 - Clean Water Act
401(a)(2) - Clean Water Act**

NOTICE OF ADDITIONAL PUBLIC COMMENT OPPORTUNITY ON CLEAN WATER ACT SECTION 401(a)(2) REVIEW FOR POLYMET MINING NORTHMET PROJECT

NOTICE IS HEREBY GIVEN that the United States Army Corps of Engineers St Paul District is providing 15 additional days for the public to comment on the review we are conducting on the PolyMet NorthMet Mining Project (Project) under Section 401(a)(2) of the Clean Water Act (CWA).

The Corps conducted a three-day public hearing from May 3-5, 2022, on this action. We conducted this public hearing in response to an objection from the Fond du Lac Band of Lake Superior Chippewa (the Band) under Section 401(a)(2) of the CWA to the Corps' Section 404 permit for the Project and the Band's request for a public hearing.

We followed procedures for this public hearing as specified in 33 CFR 325.2(b)(1) and 33 CFR Part 327, and conducted the public hearing for the purpose of collecting information or evidence that we will consider related to the Project's effects on quality of the Band's waters. We have posted all information submitted to us by the Band, EPA and PolyMet during the hearing to our PolyMet Project website. As of June 15, 2022, we have posted official transcripts of all verbal comments from the three day public hearing to the Project website as well. You may find this information here:

<https://www.mvp.usace.army.mil/Missions/Regulatory/PolyMet/>

We provided opportunity for the public to submit written comment until June 6, 2022. We have received over 22,000 comments to date.

ADDITIONAL PUBLIC COMMENT PERIOD: Due to requests for additional comment time and the complexity of this action, we have decided to provide an additional 15 days for the public to comment on this action.

We encourage all commenters to focus their comments on how the current suspended Section 404 CWA permit including its conditions, if reinstated, would violate applicable water quality requirements within the Band's downstream waters. Further, we are seeking information on whether new conditions could be added to a modified Section 404 CWA permit that would ensure compliance with applicable water quality requirements of the

Band. Comments expressing either support for or opposition to the Project will not be informative to our decision on this matter. Rather, we must base our permit decision on substantive evidence related to applicable water quality impacts under CWA Section 401(a)(2).

Please submit written comments electronically to the following email by 5 p.m. CST on June 30, 2022: USACE-PolyMet-401a2@usace.army.mil

If you are unable to submit comments via email, you may send your written comments by USPS, UPS or FedEx, with a postmarked date no later than June 30, 2022, to the following address:

U.S. Army Corps of Engineers
St Paul District
Regulatory Division
Suite 700
ATTN: Desiree Morningstar
180 East 5th Street
St Paul, MN 55101

If you have already submitted comments, please do not resubmit those comments.

We will include all written comments we receive in our administrative record on this action. Please note that names and addresses of those who submit comments, including verbal comments, in response to this Public Notice become part of our administrative record, and may be available to the public under provisions of the Freedom of Information Act.

We will consider all relevant information submitted to us to inform our final permit decision to either revoke the Section 404 permit, reinstate the permit, or modify the permit with new conditions.

ADDITIONAL BACKGROUND: PolyMet Mining, Inc. submitted a permit application to the Corps on July 16, 2004, requesting authorization to discharge dredged and fill material into waters of the United States under Section 404 of the Clean Water Act in association with the development of a copper-nickel-platinum group element mine and associated facilities. The Corps and the Minnesota Department of Natural Resources co-lead development of the Environmental Impact Statement, with the United States Forest Service serving as a co-lead agency later on in the process. The Minnesota Pollution Control Agency issued a CWA Section 401 Certification for the Project on December 20, 2018.

The Corps completed its Record of Decision and issued a standard individual permit to PolyMet Mining, Inc. on March 21, 2019, authorizing the discharge of dredged or fill material into 901 acres of wetlands and an indirect loss of approximately 27 acres of wetlands caused by the regulated activities. The permitted alternative avoided direct impacts to approximately 500 acres of wetlands at the mine site. The permit included special conditions requiring compensatory mitigation to offset the loss of wetlands including the purchase of 1,278 wetland bank credits from an approved bank located in the bank service area of the impacts, actions to minimize impacts, and monitoring for adverse indirect effects to wetlands adjacent to the mining pit. Should monitoring demonstrate the indirect loss of

wetlands in connection with the discharge of dredged or fill material authorized by the Corps permit, the Corps will require compensatory mitigation sufficient to offset this loss.

On September 10, 2019, the Band filed suit in the U.S. District Court for the District of Minnesota (court), alleging the EPA and the Corps violated CWA Section 401(a)(2) due to EPA's failure to issue notice to the Band and the Corps' failure to hold a hearing on the downstream impacts of the Project or take measures needed to ensure the Project meets the Band's water quality requirements. On February 16, 2021, the court ruled that EPA had a non-discretionary duty to make a "may affect" determination pursuant to CWA Section 401(a)(2). In response, EPA filed a motion on March 4, 2021, requesting a voluntary remand to allow EPA to make the "may affect" determination required by Section 401(a)(2). Further, on March 4, 2021, EPA requested the Corps consider suspending the Section 404 CWA permit if the court granted its motion for a voluntary remand. Subsequently, the court granted EPA's motion on March 8, 2021. On March 17, 2021, the Corps suspended the Section 404 CWA permit while the EPA reconsidered effects from the Project under Section 401(a)(2) to water quality downstream in the State of Wisconsin and in the Band's reservation. To date, no work in waters on site as authorized under the Section 404 CWA permit has begun.

On June 4, 2021, the EPA issued a "may affect" determination to the Band and the State of Wisconsin. Each party had 60 days to determine if the discharge associated with the CWA 404 permit and certification will affect the quality of its waters so as to violate any water quality requirements, to notify the EPA and Corps of its objection and to request a public hearing. On August 3, 2021, the Band submitted to the Corps an objection to the Section 404 CWA permit and requested a public hearing on the objection pursuant to CWA Section 401(a)(2). The State of Wisconsin did not object to the CWA Section 404 permit.

The Band is a federally-recognized tribe and Sovereign Nation and their reservation is downstream of the Project. The Band is also recognized as a "state" for purposes of Section 401(a)(2) of the CWA. The Band has determined that discharges into waters of the United States associated with the Project will affect the quality of the Band's waters so as to violate its water quality requirements in its reservation. The Band subsequently notified the Corps and the United States Environmental Protection Agency (EPA) of its objection to the Corps' issuance of a Section 404 CWA permit and requested a public hearing.

You may find further details about the project, including the terms and conditions of the suspended Section 404 CWA permit and our suspension letter here:

<https://www.mvp.usace.army.mil/Missions/Regulatory/PolyMet/>

If you have any questions concerning this Public Notice, you may call (651) 290-5342.